

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON

In the Matter of the Application)
regarding the Conversion and)
Acquisition of Control of Premera Blue)
Cross and its Affiliates.)
) No. G 02-45

MOTION HEARING

on

December 10, 2003

Tumwater City Hall
555 Isreal Road
Tumwater, Washington

Taken Before:

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P R O C E E D I N G S

(3:01 p.m., December 10, 2003)

COMMISSIONER KREIDLER: Welcome. It's good to see everybody here once more so we have a chance to talk over a specific issue that's before us. We -- today we have a chance to talk about a request for an extension of the time period. And let me just say that we're probably right about the midpoint right now in this process.

We had 200 people. Yori Milo chose not to come, but in Spokane we had 200 people that -- which was a good turnout considering the kind of weather that they were having over there. And we had a reasonable turnout from people over in Yakima. And we have a major hearing, public hearing, scheduled for tomorrow night at Seatac. And we have good -- I understand right now that that's going to be very well attended, too, and next week we'll have one up in Bellingham.

Let me just say that I think it's safe to assume -- these are public hearings that were not required as a part of a Form A filing. These were public hearings that were optional, but I felt, as part of making sure the public was fully enlightened as to what was taking place and to give them an opportunity, more importantly, to offer their comments as to how they viewed the process, particularly after the consultant reports were made available to them.

1 Now, some have made some suggestions, or at least
2 everyone's seen them, that somehow there might be some sort
3 of a back-door deal being considered at some point in this
4 process or maybe taking place. And that really troubles me
5 considering the very public process that we've been engaged
6 in up to this point.

7 And I can tell you right now that I'm committed to a
8 very public process. That's not going to change one iota.
9 If you go to our website, you can have an opportunity to view
10 just about everything that has been -- in fact, it is
11 everything that's been filed so far, from the orders that
12 I've issued, to expert reports, to related documents and
13 materials. Everything is posted there. As it comes in, we
14 post it. And we're going to continue to take this approach.

15 In the end I want to make it very clear that the final
16 say will be made by me. At this point everything is open,
17 and we have an opportunity to have a full discussion about
18 the issues and what is important in this process. That will
19 not change.

20 As we all well know, but it probably is good to mention,
21 I am walled off from my own staff. There's a virtual wall
22 that exists between my staff. They are the principal parties
23 that are involved from the OIC staff and Premera. We've
24 granted intervenor status to others, and I think that it's
25 important that, for the intervenors, if there's any question

1 about how they interact, it would be a good idea to take
2 another look at the 4th order, which I -- as a part of
3 granting them intervenor status, as to just exactly how their
4 input can be entered into this process, in case there is ever
5 any questions that may come up in people's mind.

6 On the issue of a schedule, Premera's attorneys have
7 filed a motion for an extension, citing the need for extra
8 time, too, as a part of the conversion request that they have
9 submitted to my office. I would say this, that from the very
10 beginning I've had my doubts that 60 days would ever prove
11 satisfactory. And I would say that we're looking at
12 something right now that fully indicates how difficult that
13 is to try to jam a process, to render a complete decision
14 from a filing to a decision in 60 days.

15 I know that even the action that has taken place by
16 virtue of even going to court and presented the dates that
17 have been set put an inordinate pressure on my staff. Even
18 though there was a virtual wall, I was clearly aware of the
19 stresses and strains that they were going through as a part
20 of this process. But it was one that was -- one that was
21 determined effectively by virtue of the court action.

22 I think that as we go forward right now with the issues
23 that we have before us -- and I believe there's three issues
24 right now -- the one thing that I would like to mention is
25 that our staff -- I believe that the 45 days really jammed us

1 from the formal hearing's completion to the time of the
2 action of the decision being rendered by me, and we need 60
3 days. Currently this specifies 45, but we need 60 days in
4 order to make sure that all of the information is fully
5 reviewed and -- and it certainly would be unfair to all to
6 wind up not having ample time right now to make that
7 decision.

8 Did I cover that point well enough? Is that the one
9 that...?

10 MS. BEUSCH: We'll probably come back to it.

11 COMMISSIONER KREIDLER: We'll come back.

12 Let's move on to what we have in front of us right now.
13 And what I see right now before us are three questions. And
14 these are the issues as I understand them: First one is
15 whether Premera's request for an extension of the case
16 schedule in order to give it the opportunity to amend its
17 Form A should be granted; and two, will the intervenors
18 participate in or be informed of any discussions regarding
19 possible amendments to the Form A; three, if the extension is
20 granted, should it be the schedule proposed by Premera or the
21 one proposed by the intervenors.

22 I'm going to open up now so we can have some discussion
23 about this. And I would like to do it in this order: I'm
24 going to ask Premera to speak first, OIC staff, and then
25 we'll turn to the intervenors.

1 MR. MITCHELL: Thank you, Commissioner Kreidler.
2 And let me say at the beginning and, I think, on behalf of
3 all of the parties, how much we appreciate you taking the
4 time to hear this on an expedited basis given the other
5 pressures that are upon us.

6 Premera's motion to extend the case schedule is
7 straightforward. The draft and final reports prepared and
8 submitted by the OIC staff's consultants identified a number
9 of concerns and issues related to Premera's Form A statement.
10 For example, the investment bankers from the Blackstone Group
11 questioned certain restrictions on the ability of the
12 foundation shareholder that might limit the times or the
13 quantities of disposition of shares of stock, which under
14 Premera's proposal will be given the foundation shareholders.

15 Since the first week of September, Premera has been
16 trying to get together with the OIC staff and consultants to
17 understand their concerns and to address ways in which the
18 proposal could be perhaps massaged to address those concerns.
19 The scheduling of such a meeting has been a big challenge for
20 all concerned given the deadlines in this case, scheduling
21 for submitting draft and final reports, more recently the
22 deadline for completing the discovery, which passed on Friday
23 the 5th of December.

24 As the Commissioner knows, the OIC staff and consultants
25 were able to get together with Premera and its consultants

1 for one meeting on October 22nd. And by consensus,
2 substantial progress was made on a number of fronts. Premera
3 wrote a letter to Mr. Odiorne and memorialized the results of
4 all those discussions and all of the issues that were
5 addressed and supplied that to the intervenors on the 23rd
6 of October.

7 At this point, I think it's safe to say that both
8 Premera and the OIC staff believe that further discussions
9 could very well be productive. Indeed, they would hold real
10 promise for narrowing the issues in dispute. But the press
11 of other deadlines has made it extraordinarily difficult, if
12 not impossible, to duly get people to get together for that
13 purpose.

14 We have, I think, come to the conclusion that we need a
15 little bit of breathing room in the case schedule in order to
16 allow time for the parties to actually sit down and
17 understand each other's positions and then, perhaps, to offer
18 amendments to the Form A statement.

19 And there's a related issue here in terms of the need
20 for breathing space in the schedule to get together. The
21 related issue is how the outcomes of any such discussions are
22 going to be passed along to the Commissioner.

23 As you know, the OIC staff has taken a consistent
24 position that any changes that may be acceptable to Premera
25 in the Form A statement must be reflected in amendments to

1 the statement. And the staff wants to do it in part to make
2 sure the public has ample opportunity to understand and to
3 respond to those changes. We don't necessarily agree with
4 that particular position, but we do recognize that there are
5 substantial advantages if that happens, particularly with
6 respect to public input into the process.

7 At this point we face the unhappy fact that the deadline
8 for amendments set forth in the original case schedule, which
9 was established back in September, has passed. That
10 deadline, of course, was driven by the decision date that was
11 decreed by Judge Casey. And at this point we recognize that
12 in order to accommodate what the staff would like to see come
13 out of that process would require an extension of the date
14 for decision that is set forth in Judge Casey's order.

15 Our proposal does suggest that we would agree to a
16 two-month extension of time under -- on Judge Casey's order
17 for decision to accommodate the process of discussions, the
18 submission of any amendments, the preparation of supplemental
19 reports on any changes in the Form A, and then public
20 response to that.

21 As I say, we propose to make use of the extension of
22 time to have a meeting, more than one meeting, with the OIC
23 staff and consultants, to exchange redline drafts of any
24 documents that may be changed, and then to submit formal
25 amendments if those are agreed to as a result of this

1 process. The public would have over two months to look at
2 those amendments, if any there be, and to comment on those in
3 advance of the rescheduled public hearing.

4 We do not propose to cancel any public meetings, to
5 reopen discovery, or to alter the schedule in other ways. We
6 understand that the intervenors would like to do such things.
7 We don't think that the steps that they propose would be
8 appropriate, and, indeed, we think they could be
9 counterproductive. But I would probably want to defer
10 responding to their proposal until later on.

11 Our proposal is a simple and straightforward one to
12 extend the case schedule to just over two months to
13 accommodate the process of discussion and the presentation of
14 potential amendments to the Form A. In all of that, I would
15 say that neither we nor the OIC staff would presume to in any
16 way limit what the Commissioner might do in this proceeding.
17 We understand full well that anything that the OIC staff and
18 Premera might agree upon would have to be presented to,
19 explained to, and passed upon by the Commissioner at the end
20 of the day.

21 COMMISSIONER KREIDLER: Good. Thank you. Let me
22 make just one point, you know, because I think there's some
23 question that's been raised as to some of the issues that
24 have been discussed between Premera and OIC staff. The
25 purpose of what I'd said earlier about those discussions

1 really was aimed at making sure that everybody understood
2 what each party was saying. So it was just clear that you
3 understood that it was apples to apples. So it wasn't apples
4 to oranges or whatever it might be.

5 And there's a conflict that may exist; it's
6 understanding the parameters of what that conflict is so that
7 you understood where each was coming from, not to resolve
8 them. Because the important decisions, clearly they fall to
9 me and, I think, are ones that, quite frankly, I hope that
10 you can help sharpen the edge so it's easier to then make a
11 decision where one is required on my part on any matter. And
12 it also makes it clear that the public has an opportunity to
13 be aware of the decisions that are before me at that time.
14 That is not by way of any -- I just want to make sure that
15 that's clear as a part of the process.

16 Mr. Odiorne or Mr. Hamje?

17 MR. HAMJE: Commissioner, thank you. I'm John
18 Hamje. And I'm special assistant attorney general and will
19 be speaking on behalf of the OIC staff today.

20 I'm going to try to just focus on the three issues,
21 Commissioner, that you've set out and limit my discussion
22 there. Also, I don't want to repeat what Mr. Mitchell has
23 already gone over today. Because much of -- as you well
24 know, the OIC staff has filed a concurrence with respect to
25 the motion for extension of time or extension of case

1 schedule. And so we have -- we support this particular
2 schedule that has been proposed by Premera and have set out
3 in our response the reasons and grounds for which we're
4 supporting it.

5 We do ask that it be granted. And I think that the
6 reasons are pretty significant for granting it. Our most
7 important reason I found something that, I think, motivated
8 the staff to actually sit down and talk to Premera about the
9 possibility of this type of a solution to what we saw as a
10 problem, was to make sure that the public and the parties,
11 including the intervenors, would have notice of the Form A
12 that we were actually going to be dealing with during this
13 process.

14 And as you well know, there was disagreement between --
15 and still is between Premera and the OIC staff with respect
16 to exactly how any changes or -- to the Form A might be
17 brought to your attention in an appropriate way. And I think
18 Mr. Mitchell talked about that disagreement, and I don't need
19 to go over it any further. But what has really been
20 important is that, if there were going to be a change, it was
21 going to be necessary for the public and the intervenors to
22 have notice of those changes and, of course, the OIC staff as
23 well.

24 But that was really what the key was. And to have
25 notice, they've got to have time to react. And so we had to

1 build back into the process a period of time where this could
2 be done, where we could go ahead and have a period of time
3 where maybe there could be some discussions that could go on
4 that could be substantive between OIC staff and Premera that
5 might very well result in a sharpening, as you put it,
6 Commissioner, of the disagreements.

7 But also, there may be some areas where there might be
8 some changes that could address the concerns raised by the
9 OIC staff consultants and the consultants of the intervenors,
10 which would then respond directly to those concerns, which
11 could then possibly result in some narrowing of the issues,
12 not just a sharpening of them, but a narrowing.

13 And, of course, I'm not trying to imply that by
14 "narrowing of the issues" that would mean that there would
15 not be a full explication of all of the issues. Because
16 there would be a need to discuss not only those changes or
17 what they might signify, but there's going to have to be a
18 discussion of why that particular solution that might have
19 resulted in a change was, in fact, a good solution. It may
20 be that you would disagree that it's a good solution, but it
21 still would need to be brought out so that you would have a
22 full record to make a determination.

23 So that is really, I think, the core of what we're
24 talking about here, is the notice to the public and to the
25 parties, including the intervenors. And I want to make it

1 clear, too, that it would be notice as well to the OIC staff.

2 Of course, one of the concerns we had, too -- and it's
3 one that I think you've alluded to earlier in your remarks --
4 was that if -- that this hearing -- and in particularly after
5 our prehearing conference that we had with Judge Finkle on
6 Monday, this hearing could end up being bogged down by
7 discussions, positions taken, arguments over language, and
8 instruments that are making up the Form A, which, if there is
9 some attempt by the Premera and the OIC staff to focus on
10 these, it could very well be that a lot of those
11 discussions -- those -- the time that might be spent on
12 these -- essentially what are minutia, could be -- could be
13 dealt with in a more expeditious way, a way that could be
14 handled more quickly and in summary fashion so that it would
15 be possible for us to focus on the real issues that may very
16 well end up dividing the staff and Premera and the other
17 parties in this case.

18 And of course, the more minutia we focus on, the more
19 time it might take for the Commissioner and your assistants
20 to develop a final order because it would just -- you know,
21 the more we can go ahead and try to introduce into the
22 process the ability to shortcut things, then that, I think,
23 can benefit us at every level, including the time that you
24 have to spend in drafting a final order in this matter.

25 One thing I wanted to add as well, too, is that we're in

1 the midst right now of these public forums. And there is no
2 reason that, if the Commissioner -- if you felt at some later
3 point after a revised Form A might be filed, if you look
4 favorably upon the motion of Premera, that you could go ahead
5 and call for another round of public forums that would give
6 the public even more input into the process at that point in
7 time. It's just a question of what you feel like could be --
8 would be useful for your purposes.

9 Now, the second issue that you raised -- and I -- I'll
10 admit right now that I may not have covered everything that I
11 would like to cover with respect to the first, but as I said,
12 I don't want to repeat everything that Mr. Mitchell has said.

13 But the second issue you asked about was the
14 participation of intervenors. What's their role in
15 dealing -- and with respect to -- with respect to either
16 discussions regarding the Form A? And I believe that that
17 role is pretty well set out in the 4th order. The role
18 really talks about limits for the intervenors. They are not
19 full parties in this process. Their role is limited
20 essentially to being allowed discovery and to present
21 evidence, including expert testimony, concerning certain
22 issues in this matter.

23 Nothing that I could find in the 4th order indicated
24 that the intervenors are entitled to directly participate in
25 substantive negotiations or discussions with the OIC staff

1 and Premera regarding issues related to the Form A. So I
2 would -- you know, I really believe I would draw the line and
3 say that they shouldn't participate, but they're entitled, as
4 is the public, to notice.

5 And one of the proposals that was put forward by Premera
6 in our discussions with respect to developing a procedural
7 solution, what we considered to be the problem that it was --
8 resulted in the motion for extension of the case schedule,
9 was that Premera actually came forward and said, "We need to
10 provide information to the intervenors." And so we would
11 recommend having briefings where we not only would provide
12 them information as to if -- what might be happening in any
13 substantive discussions, but also seeking some input, pull,
14 from them as well. And I think that goes beyond what I had
15 actually anticipated hearing from Premera, and I felt like it
16 really showed their good faith in this process.

17 And, you know, the details of how this all might work --
18 be worked out, I can't really speak to. It would have to be
19 something in which it would involve intervenors' counsel.
20 And there would have to be a particular time set aside,
21 either each day -- which I would hope it would be possible to
22 have enough information or enough progress or production to
23 permit an imparting of information each day to the
24 intervenors. And also give them an opportunity maybe at that
25 time or within a day or so or at some later time to provide

1 input if they felt like it would be useful to the process and
2 if that was something that they had.

3 So that covers, I think, the remarks that I wanted to
4 make with respect to the second issue that you talked about,
5 Commissioner.

6 Now, with respect to the third, time has really been a
7 topic of a lot of discussion in this process. We've had
8 discussions about it over in Thurston County Superior Court.
9 We've talked about it among ourselves. We've had hearing
10 after hearing where time has been an issue. This is --
11 that's really what this case has been about more than
12 anything is time. And we believe and the OIC staff believes
13 that the time that Premera has agreed to propose as -- for an
14 extension is workable. It's something that we can work with.

15 It will help us achieve what we believe is the goal of
16 it, which is to provide -- give us a timetable to go ahead
17 and pause for a bit, not have to work with developing and
18 filing a prefiled direct testimony and stop everything in its
19 tracks, and then complete some discussions, and then have a
20 revision to the Form A, and then have a it out there for the
21 public and for the consultants and everybody to react to.
22 And we believe that that will provide the amount of --
23 sufficient amount of time -- it's not a perfect solution, but
24 it is a solution which we think is reasonable and which we
25 can endorse and which we have endorsed.

1 Now, the only problem -- if we have lots of time, and we
2 did not have the intervention of the Thurston County Superior
3 Court, the proposal -- proposed schedule by the intervenors
4 might be something that would be an alternative. But I
5 really don't believe that it is an alternative because of
6 what happened in Thurston County Superior Court, unless
7 Premera is willing to go ahead and go forward and agree to
8 something like that. And that would be the only way that I
9 think that could occur at this time. So therefore, I don't
10 think it is a realistic proposal.

11 And also, if you look at it, it's based upon what -- in
12 terms of the time frame, it works out from the
13 October 15th date when the amendment deadline was set. We
14 know a lot more about the Form A and about the consultants --
15 the issues raised by the consultants since October 15th.
16 I'm really not convinced that we would need that entire
17 amount of time in any case. I really believe that we
18 could -- because of all the works that we've been doing these
19 last six, eight weeks or so, that we could, the consultants
20 and the parties, could compress that time period and react
21 appropriately to any new Form A that might be filed under
22 Premera's proposed schedule, which would be January 8th, by
23 the 29th.

24 And, of course, if I recall correctly, our response did
25 ask me to footnote that there might be a need for some legal

1 room for a couple or three days there. But no one could say
2 for certainty that it would -- that we know what's going to
3 be -- if there are going to be any changes and what those
4 changes will be. And so let me see them, then we'll have a
5 better idea, and hopefully it will not change our view. But
6 if it does, there may be a need for us to come back and talk
7 to you and Premera about maybe a day or two or three extra.
8 Hopefully that would be the limit.

9 So that's all I have. Thank you.

10 COMMISSIONER KREIDLER: Let's turn to the
11 intervenors.

12 MS. HAMBURGER: Thank you, Commissioner. I'm Ele
13 Hamburger with Columbia Legal Services speaking on behalf of
14 the intervenors today. And we appreciate your holding this
15 hearing on an expedited basis and in response to our motion
16 for an emergency hearing and the Premera motion to extend the
17 case schedule.

18 I just want to say we really appreciate the OIC staff's
19 efforts to keep us informed about what's going on in this
20 process. We really would not have had any idea there was
21 discussion going on if it wasn't for the OIC staff telling us
22 about it, and we appreciate their efforts to make sure that
23 this is as public and transparent process as possible. Our
24 concerns about there being a closed process come from what we
25 understand Premera has been asking for. And I just want to

1 make it clear that we believe that the OIC staff has really
2 gone above and beyond in their roles to make sure that its
3 public.

4 You know, the intervenors, just to get to your three
5 points and respond to the issues that have been raised, we
6 filed our emergency motion based upon what we've been hearing
7 about the discussions and our feeling that the deadline for
8 amending the Form A was on October 15th. And there was a
9 lot of discussion about whether October 15th was a meaningful
10 deadline, and the October 15th was reinforced as a
11 meaningful deadline in your 17th order and your
12 18th order.

13 And we had gone ahead and hired experts, spent the money
14 to have them do the research, have them deposed, participate
15 in discovery based upon the Form A as of October 15th. And
16 so it really impairs our ability to continue to participate
17 in this process to the fullest extent if the Form A is a
18 moving target.

19 We really agree with the OIC staff when they say their
20 goal is to make sure that the public has notice about what
21 the real Form A is and that it not be a moving target.
22 That's what we want. We want to know what are the legal
23 terms of this deal so we can respond to it, so the public can
24 respond to it. And that's why we filed this motion.

25 Premera had ample opportunities to revise its Form A as

1 the declaration to Jim Odiorne on the 21st of October
2 shows. They were informed about the information, and
3 Premera -- there was an offer extended to work with Premera
4 to revise the Form A, and that offer was not taken up.

5 Premera argues in its response to our motion that, well,
6 they wanted to wait until the issues were finalized. But
7 that is a strategic decision. It's not a decision that was
8 dictated by the circumstances. They have could have revised
9 some of it. They could have revised all of it earlier. They
10 could have done it after the draft reports were made
11 available. But each step along the way they didn't.

12 After the deadline passed, then they sought to engage
13 with the OIC staff about conditions. And regardless of how
14 you come out today on this motion, we really urge you to
15 clear up this issue about whether the Form A is the Form A is
16 the Form A, you know, what are the real terms of the
17 transaction or whether conditions can be offered up by
18 Premera, you know, at any point in the process that
19 essentially changes the terms of the transaction, and whether
20 they will be permitted to have that kind of moving-target
21 approach to the Form A filing.

22 So we are -- our initial approach, and as we said in our
23 brief, is that those orders should be meaningful. These are
24 the rules we've all played by. It's been hard on us. It's
25 been hard on everyone to operate under this schedule, but

1 we've now gone forward under that schedule. And we're
2 prepared to see it through to the end.

3 Now, granted, we understand that Premera at any time
4 could just say, "Okay. I'm not going to do this Form A," and
5 refile. And what's the difference between that and revising
6 a Form A? And we understand there might not be a lot of --
7 functionally a lot of difference to that. And that's why we
8 have an alternative position. We really feel that, if
9 Premera is going to be permitted to revise its form A, then
10 we have to have really clear ground rules about what that
11 means, and a process that is fair, transparent, and allows
12 the public and the intervenors, all, to be able to know what
13 the deal is, be able to do discovery on it, and be able to
14 participate to the fullest extent that's possible.

15 So Premera's -- the question -- or I'm going to take
16 your questions out of order and skip ahead to the third
17 question, if that's okay.

18 COMMISSIONER KREIDLER: Fine.

19 MS. HAMBURGER: You asked, well, which schedule
20 should it be? Should it be Premera's schedule? Should it be
21 the intervenors' schedule, if you move forward with allowing
22 an adjustment in the schedule. And let me just say this: We
23 by no means -- we have always argued that the Insurance
24 Commissioner has broad authority in this process, broad
25 authority to set time frames and procedural matters. By no

1 means do we intend in our brief to imply otherwise. But
2 we -- we know you have the authority to rule either way on
3 this. But what we are asking is that a decision be made that
4 protects our due-process interests and our participation in
5 this process.

6 Premera's proposed case schedule is just -- it's
7 unreasonable and unfair. It's simply too short. And Premera
8 doesn't justify in its filings why it wants a 60-day schedule
9 as opposed to a 90-day schedule or 120-day schedule. We need
10 adequate time to review this process. As you noted, 60-days
11 seems too short. And our expectation is, whatever gets filed
12 on January 8th, if it's going to address the concerns
13 raised by the OIC experts, will be, as Jim Odiorne said,
14 substantial and significant. And if those revisions are
15 going to be that different, we should be looking at having
16 enough time for our folks to do discovery on it.

17 We're not asking for all of discovery to be reopened.
18 What we're saying is let's go back to October 15th and
19 figure out, okay, OIC reports will be due on this day. Then
20 let's give ourselves a little bit of time to have our experts
21 look at the reports and look at the changes and issue their
22 opinions.

23 We're willing to put our experts through Premera's
24 lengthy depositions again, but we want the ability to take
25 depositions ourselves. Here's the reason why: Right now our

1 interest in discovery's a lot different. We agree with what
2 the OIC's experts are saying about their concerns about the
3 transaction. We don't know if we'll agree with those
4 recommendations after this is done. And so our interests in
5 discovery changes based upon what the OIC experts say, based
6 upon a new revised Form A, plus there may be different pieces
7 of information we need in the revised Form A that we haven't
8 gotten now because things change. For that reason, we need
9 additional time built into the case schedule.

10 We heard folks talk about the public hearings and
11 whether or not the public hearings are required by law. In
12 any event, they have happened. The testimony is being taken
13 under oath and subject to cross-examination. And because
14 they have those attributes of sworn testimony, that they are
15 being considered in the record of the hearing. The Insurance
16 Commissioner's order itself distinguished between sworn
17 testimony and written comments and the weight to be given to
18 the different kinds of testimony.

19 It's only -- just because these public hearings may or
20 may not be required by law, it doesn't make them less
21 valuable or important. Since some of the public sworn
22 testimony has been obtained, it's only fair to the people
23 that have participated in those hearings -- they have the
24 opportunity to review any changes to the conversion filing
25 and provide additional testimony.

1 Now, Premera, also, in its brief argues that the 63 days
2 contemplated is more than the 60 days' review under the
3 Holding Company Act. As we talked about before in our
4 briefs, we think Premera misreads the requirements of the
5 Holding Company Act. The 60-day period doesn't take effect
6 until after the Insurance Commissioner deems the Form A
7 filing complete, and at this time there's been no deeming of
8 completeness of the current Form A. And it's premature to
9 determine whether a new Form A would be deemed complete by
10 the Insurance Commissioner or whether 60 days or any longer
11 period of time is appropriate.

12 The Insurance Commissioner's staff raises this issue
13 about how this interacts with the Thurston County stipulated
14 agreement dated September 12th, and I just want to address
15 that for a minute. We think you have broad authority to
16 decide Premera's case schedule, our case schedule, some other
17 case schedule, that that is within the -- your purview, and
18 that whether or not Premera agrees with a proposed case
19 schedule doesn't prohibit the Insurance Commissioner from
20 going -- filing his own motion, which if the Insurance
21 Commissioner said, "Okay. We'll go with the intervenor's
22 case schedule," we would support it before Judge Casey and to
23 explain, "Well, Premera asked for more time. This is what we
24 think is appropriate," and to approach Judge Casey from that
25 position.

1 The alternative could be, if Premera's unwilling to
2 agree to a longer case schedule, if you determine that it's
3 appropriate and to say to Premera, "Okay. Well, you can
4 either go forward on this deal, or you can, you know,
5 withdraw it and refile. And I'll take a look at it and see
6 when to deem it complete. And when those time frames start,"
7 we can do it that way. But I hope that the Insurance
8 Commissioner -- that the broad authority of the Insurance
9 Commissioner is not unnecessarily limited by these
10 stipulations and agreement from September 12th. If Premera
11 is allowed to revise its Form A, we urge you to consider a
12 case schedule that protects the rights of all parties,
13 including the intervenors.

14 The -- I guess to go back to your question about how
15 should we -- how should the intervenors participate in the
16 discussions that may continue, let me just say this: If the
17 arguments in favor of keeping us out is the need to sharpen
18 and narrow the focus and to have an efficient process, it can
19 only be helpful to include us. Because if we all go to a
20 hearing with the same common understanding of what the issues
21 are, then the whole thing would be more efficient and more
22 focused.

23 To leave out four of the six parties so that we may be
24 thinking the big issues are over here when Premera and the
25 OIC think the big issues are over here doesn't make sense.

1 It's not -- it doesn't achieve what Premera and the OIC say
2 would be achieved by excluding us. We're not saying that
3 Premera or the OIC can't talk. Absolutely, they can talk.
4 They have talked. You know, there's nothing we can do about
5 that.

6 What we're saying is that it comes to the terms of the
7 actual transaction, where it's so important that the
8 process -- as John Hamje said, that the process be open and
9 transparent and that the public have notice. We feel that's
10 important, to get that dialog out in the public view.

11 There's no evidence that we would disrupt or interfere
12 with the discussions sought by Premera. And it would allow
13 to us participate efficiently in a shorting process by
14 knowing what the issues that are likely to be addressed in a
15 revised Form A. May also help us target any limited
16 discovery that may take place and be able to participate much
17 more efficiently in the process that follows.

18 COMMISSIONER KREIDLER: It is an area where it gets
19 a little bit gray, between discussions to sharpen and where
20 there are more substantive discussions taking place. I can
21 guarantee you I want to err toward the side here of making
22 sure that where there are issues that should be resolved by
23 me or ones that come to me in their -- would afford the
24 opportunity for all interested parties to express their
25 opinions. Clearly that's important. And I would be the

1 first to want to make sure that was clearly understood.

2 You mentioned the issue related -- you mentioned the
3 issue of conditions. And Premera, I believe, brought up the
4 possibility that there might be conditions raised at some
5 point. I think number one is that I don't have to specify
6 conditions. And the second is that doesn't mean that I
7 won't.

8 But if I were to specify conditions, I think that those
9 would be ones that, quite frankly, should -- there should be
10 an opportunity for the public to have comment. It shouldn't
11 just come up at the hearing. This is one where the public
12 has an opportunity to know what those conditions are so that
13 there's ample opportunity to interject their views on a
14 particular condition that I may be putting forward.

15 But -- and it certainly doesn't mean that if the -- if
16 there are conditions, conditions and then the other choices
17 to reject the application, those are -- it's up for debate
18 whether there would be conditions that it may be that the
19 Form A as is or as amended as opposed to acceptance or
20 rejection at that point. It doesn't -- there is no
21 requirement that I have conditions or agree to conditions.

22 Let me just say that as I take a look at the schedule
23 right now before us, I would say that the intervenors, I
24 think, have put forward a good schedule. There are a couple
25 of changes that I think would probably be necessary as a part

1 of that. Number one is we certainly don't want to cancel
2 tomorrow's or next week's hearings that are scheduled at
3 Seatac and Bellingham.

4 As for rescheduling additional hearings, I think at this
5 point I'd want to see and have some time to reflect on that
6 before making a firm decision. The other is -- and I jumped
7 ahead of myself -- that if there is going to be an extension
8 having 60 days between the end of the formal hearing and the
9 decision, it would afford us more time to fully consider all
10 of what we've had in the way of testimony and the data that's
11 been presented than the 45 days that, I believe, is currently
12 described in the intervenors' proposal or schedule.

13 I would say that, also, we'd have to be flexible on
14 location and the date because we've got to find another
15 location if it were to be extended. And I think what we
16 really have now is whether Premera would find that the
17 intervenor schedule, with a couple of changes, like I've
18 suggested right here, is acceptable, or do we stay with the
19 March 15th date, which is what we have currently before us.
20 I think Premera would have to approve of that case schedule
21 in order for us to be able to make any changes so that the
22 choice would be the intervenors case schedule with these
23 modifications that I've described, or do we stay with the
24 March 15th date.

25 I would say this: If Premera would like an opportunity

1 now to talk thoroughly about this, I certainly would afford
2 them that opportunity to do so if they want to take a small
3 break for that purpose.

4 MR. MITCHELL: Commissioner Kreidler, I think that
5 we probably would like a caucus at some point. But before we
6 do that, I would like to actually have a opportunity to talk
7 about the intervenors' schedule and the items in it, an
8 opportunity to make a statement.

9 There are, I think, two different things going on in
10 terms of the intervenors' requests. One is a request which I
11 think is entirely reasonable, to make sure that they and the
12 public are fully informed of the process and may respond to
13 any changes that may be offered. The other is a whole series
14 of intermediate deadlines that they have proposed for
15 identifying fact witnesses, allowing for more experts to be
16 identified, reopening discovery, a number of other things,
17 which to my way of thinking and, I think, the OIC staff's way
18 of thinking as well, are unnecessary. It will add complexity
19 and will take time without yielding tangible results.

20 With respect to the first issue in terms of their being
21 involved in knowing about the process and the discussions,
22 the issue about whether they can participate in the
23 discussions to take place between now and the 8th of January
24 is, I think, fundamental. If the intervenors are deemed to
25 be full participants in any conversations that Premera and

1 the OIC staff and its consultants might wish to undertake, I
2 don't think we're interested in pursuing that. I don't think
3 the OIC staff is interested in pursuing that.

4 And I hate to be so categorical, but the intervenors
5 have stated implacable opposition to Premera's proposal
6 before they knew anything about it. They were opposed before
7 they read the OIC consultants' reports. They were opposed
8 after they read them. And they'll be opposed regardless of
9 what we might do following discussions with the OIC staff's
10 consultants. Participation by people who have that kind of
11 outlook is not going to be, I think -- permit productive
12 exchange of views, and particularly, it's not going to allow
13 for anything to happen between now and the 8th of January
14 given all the other scheduling constraints that we face.

15 We have proposed, as Mr. Hamje said, to give them daily
16 briefings of everything that's been discussed. They will
17 have full information as the process goes along as to
18 everything that's going on. And they don't have to wait till
19 January 8th to have anything sprung upon them. So that, I
20 think deals with their concern about being fully informed
21 about the process. But it allows for at least some chance of
22 success in the discussions that are designed, after all, to
23 sharpen the issues and to respond to issues and concerns that
24 have been identified by the OIC staff's consultants. That's
25 the starting point.

1 Secondly, if there is a concern about their ability to
2 respond to the -- whatever's put on the table on January 8th
3 with additional discovery, the only discovery that would seem
4 to us to be at all conceivably appropriate would be that
5 focussed on any differences in the consultant reports that
6 are generated in the remainder of the month of January. And
7 that could be accomplished within the time frame set forth in
8 our proposed schedule.

9 Indeed, we think that, notwithstanding the fact that the
10 discovery cutoff has passed on December 5th, that the
11 Commissioner could, if he wished, provide for a period of
12 time, perhaps as long as until February 14th, for there to
13 be depositions of anybody who submitted a supplemental report
14 on the subject matter of the supplemental report, which would
15 be any changes in the Form A. That's all that would be
16 necessary to prepare for the hearing. And again, it would be
17 more than adequate opportunity for them and lots of time for
18 the public to respond.

19 We have no opposition to the notion that there might be
20 more public hearings in February. And indeed, we thought
21 about proposing that, and then decided it was the
22 Commissioner's prerogative to do that. That, again, could be
23 accomplished quite readily within the time frame that we
24 proposed.

25 One of the interesting things about the intervenors'

1 schedule is that they've actually squeezed your decision
2 time. We had proposed a full 45 days. They propose
3 something closer to 35 to 40. And we understand your concern
4 about making sure that you have adequate time to weigh and
5 sift the evidence and provide a reasonable decision. I
6 wanted to call to mind something that Mr. Hamje said, which
7 is to the extent that we can sharpen issues before the
8 hearing and focus on real issues as opposed to the minutia of
9 particular language of particular legal documents, to that
10 extent would be much easier and should be, I think, subject
11 to -- I think, accomplished in good time.

12 So those are my thoughts on the issues that have been
13 raised by the intervenors and by their schedules. Which, as
14 I say, why you would have to have time for additional fact
15 witnesses when the facts are not going to change? Why you
16 need supplemental expert discovery and so forth is quite
17 beyond me. I think it's a reopening of Pandora's box
18 potentially. We've just been through a process of extremely
19 grueling discovery, and anything that's being done at this
20 point should be limited to whatever comes out on
21 January 8th.

22 COMMISSIONER KREIDLER: OIC staff?

23 MR. HAMJE: Commissioner, in light of your
24 comments, I guess the only pertinent comment that I can offer
25 at this point is simply that -- is to focus just on the

1 schedule that was submitted by the intervenors. And in
2 particular, I would have to second, to some extent,
3 Mr. Mitchell with respect to the question of additional
4 discovery and the need for additional fact witnesses.

5 I would urge the Commissioner to consider that, if the
6 parties, based upon any changes that might be made to the
7 Form A and the consultants' reports that flow from those
8 changes, if they raise new issues and new concerns, that a
9 party can go ahead and come to the Commissioner and request
10 some additional discovery and look at it on a case-by-case
11 basis.

12 It seems -- it seems that would be more appropriate than
13 for to us open up discovery all over again. We've just been
14 through it. It's complete as far as we can tell. And if
15 there are changes, I would -- I believe the OIC staff
16 anticipates that most of the changes are going to flow from
17 issues that have been fully vetted in the reports and in the
18 depositions that have been taken of the various consultants.
19 And so there will be no surprises or very little chance of
20 any surprises with respect to any of the changes that might
21 be made.

22 The real question would be to what extent would there be
23 some changes. There would be the real question. So to that
24 extent, again, I'm not -- you know, I'm not changing -- I'm
25 not trying to change our position. We've laid it out to you

1 before. But just based upon the comments that you've made --
2 and it appears that you've presented Premera with a -- with
3 one or two options, that was -- I just wanted to focus on
4 specific comments with respect to the intervenors' schedule.

5 COMMISSIONER KREIDLER: Clearly, if it's
6 information that has been fully vetted, as you said,
7 Mr. Hamje, that's one item. But if it is -- does represent
8 something that is new, it is a surprise, it -- or by virtue
9 of its introduction we start to see that it causes other
10 things to start to take on a different perspective by virtue
11 of the information that's come forward and is made part of
12 the record at that time, then it does change. Then we do
13 have a question here about process.

14 But let me turn to the intervenors.

15 MR. HAMJE: Thank you, Commissioner. Just to
16 briefly respond. We would have no problem having the new
17 discovery be limited to changes in the revised Form A or the
18 expert reports. And to have it -- you know, we're not
19 looking to reopen the brutal discovery we went through and
20 we --

21 COMMISSIONER KREIDLER: Okay.

22 MS. HAMBURGER: -- that's why we propose it to be
23 limited. And the -- we feel, really, that the timing has
24 been so rough, and that's under the timing we're already --
25 we're proposing. And so to have something shorter, it's

1 going to be impossible for us to fairly participate in the
2 shorter schedule.

3 Just to respond to Mr. Mitchell's concern that because
4 some of us -- and not all of the intervenors are opposed to
5 the conversion. I just want to make sure that that's clear
6 and understood that the Alaska intervenors are not opposed,
7 but some of us clearly are. We were opposed upon reading the
8 Form A.

9 If the Form A changes, we have to go back and analyze it
10 and talk to our clients. I don't think that our clients --
11 at least I can speak for my clients -- are opposed to any
12 kind of conversion in any kind of situation. They have
13 strong feelings about it and, you know, can't deny that.
14 They have very strong positions about it. But what I'm told
15 that the negotiation is about is to narrow and sharpen the
16 issues, and certainly we can participate in that.

17 MS. McCULLOUGH: Commissioner Kreidler?

18 COMMISSIONER KREIDLER: One moment, please.

19 MS. HAMBURGER: Just that, in the larger scheme of
20 things, the time we're asking for in the case schedule won't
21 prejudice -- Premera won't prejudice any of the parties, but
22 enable to us fulfill the representation of our significant
23 interest that was identified in the 4th order.

24 COMMISSIONER KREIDLER: Was that you, Amy, on the
25 phone?

1 MS. McCULLOUGH: Yes, it was. Thank you.

2 I just wanted to add to what Ele was saying, and that is
3 the Alaska intervenors have not strongly opposed the
4 conversion, but they have very strong concerns about the
5 Form A as it's structured.

6 And I think it would be important for the Alaska
7 intervenors, as well as for the other intervenors, to be at
8 the table while the issues are being discussed, not to be
9 given notice of the issues being discussed and then being
10 given notice after the fact. It seems to me really
11 inefficient as well as meaningless for us to be given notice
12 and input only after a deal has been struck between the OIC
13 staff and Premera. And to the extent that we can all -- all
14 the parties can use that time wisely to discuss the issues
15 and narrow them is a better use of resources on all of the
16 parties' behalf, regardless of our positions on the ultimate
17 outcome of the conversion.

18 COMMISSIONER KREIDLER: Let me reassure you, Amy,
19 that if a deal is struck, it still requires me to make a
20 decision. You're going to have an opportunity to express
21 your concerns and reservations. This will be one that
22 clearly will not be made by the two parties coming to an
23 agreement. It still requires me to make the ultimate
24 decision. I won't have it operate any other way.

25 MS. McCULLOUGH: Thank you, Commissioner Kreidler.

1 But I also think that -- I think it is in the best
2 interests of all the parties in terms of resources and
3 business that the intervenors should properly be at the table
4 while these discussions are being hashed out. That way we're
5 not in the position of learning the thought processes after
6 the fact and then having to come to you with, you know, our
7 reservation or objections to the particular deals that the
8 OIC staff and Premera might want to strike regarding
9 amendments to the proposal.

10 COMMISSIONER KREIDLER: I think that there's -- you
11 know, I mean, I hate to get to the point where Premera and
12 OIC staff couldn't pick up the phone without making a
13 conference call out of it.

14 There's -- there's got to be some reasonableness
15 involved here. But I think if, in fact, there turns -- there
16 is something that involves something that becomes
17 substantive, there is an opportunity here to certainly make
18 sure that all of the parties are aware of what is taking
19 place. That's reasonable. And I would have that
20 expectation, that once -- and obviously it's not one where we
21 can say automatically clearly that you've crossed the line or
22 you haven't crossed the line. Sometimes it can be fairly
23 gray.

24 But I'm indicating to you right now that when you start
25 to get into something that starts to smack of what might be

1 something that leads to a deal or some changes where
2 agreement is struck and ultimately a decision needs to be
3 made by me, I would certainly expect that the intervenors,
4 for one, were aware and had an opportunity to offer their
5 comments at that point, even before the deal was presented to
6 me. Is that fair?

7 MR. MILO: Commissioner, if I could speak, this is
8 Yori Milo of Premera Blue Cross.

9 Two thoughts, the first addresses the last issue that
10 you just mentioned. The proposal that's submitted by Premera
11 doesn't contemplate in any way to preclude your authority to
12 review the transaction as reframed, if an amendment is filed.
13 And it contemplates that an amendment document would be filed
14 by January 8th with opportunity for all parties, including
15 the intervenors, to review it, to submit supplemental expert
16 testimony on it, and that's already embedded in the current
17 proposal.

18 I do have a suggestion. You could offer -- well, let me
19 go back. We would -- the intervenors' role in this
20 proceeding, they certainly can review any changes to the
21 Form A if we file them or the current Form A if we don't.
22 They can submit testimony. They can argue at hearing whether
23 they support it or oppose it or suggest whatever they wanted.

24 But it is Premera's Form A. Premera has a right to make
25 changes or not make changes. It has a right to discuss with

1 the OIC what its concerns are, to take those into account, to
2 make changes or not, and then resubmit.

3 We don't believe there's anything anywhere that entitles
4 the intervenors the right of coming into our world of
5 deciding what the Form A amendment should look like if we
6 decide to do it. They certainly have a right to have notice
7 of it, see it, in this case, it's our view, to even submit
8 expert testimony afterwards, and that our proposal does
9 contemplate that.

10 Be that as it may, what I suggest is the following: You
11 had offered the opportunity for the parties to recess and
12 consider positions. I think it might be useful for us, to
13 OIC staff, and the intervenors to see if we can reach some
14 kind -- take a recess and see if we can reach some kind of
15 compromise that meets all of our needs.

16 COMMISSIONER KREIDLER: I agree.

17 MR. COOPERSMITH: We're certainly receptive to
18 that, Commissioner.

19 COMMISSIONER KREIDLER: Let's proceed to do that.

20 One moment here. I have this room for another 25
21 minutes. That is a caveat worth mentioning.

22 MS. BEUSCH: They'll need the room for the people
23 on the phone.

24 MS. HAMBURGER: And if we're going to confer also
25 with our colleagues who are on the phone --

1 MS. SUREAU: So can all of us leave you guys to the
2 phone, or if it's --

3 MR. COOPERSMITH: Oh, right, the conference.

4 COMMISSIONER KREIDLER: I'm going to step out, and
5 I will be right outside the door here. We're in recess.

6 (Recess, 4:04 p.m.)

7

8 (Proceedings reconvened at the Office of the Insurance
9 Commissioner, 5000 Capitol Way, Tumwater, Washington, 6:37 p.m.)

10

11 COMMISSIONER KREIDLER: I'm reconvening our
12 hearing. And now we're going to hear a report after the
13 discussion from the parties as to consensus on how we might
14 extend the dates.

15 MR. MILO: If I may, Commissioner, is that all
16 right? Of course, everybody can correct me.

17 COMMISSIONER KREIDLER: Yori Milo?

18 MR. MILO: Yori Milo speaking. And we'll have a
19 printed-out document in a second.

20 But we have worked well together to a come up with a
21 revised schedule that addresses our various concerns in a way
22 that's satisfactory. And we've got a revised case schedule,
23 which also attempts to respect the Commissioner's desire for
24 extended time after the closure of the hearing. The revised
25 end date here is a decision by June 7th, and we'll go through

1 the steps and the dates and milestones as we go.

2 With respect to the intervenors' participating or not
3 participating or being reported to or not, what we came up
4 with as a group that seems to satisfy everybody's concerns is
5 to eliminate what we had proposed before and give the
6 intervenors observation rights, to have one representative of
7 intervenors to attend all the meetings. And they would not
8 be a negotiator or participant, but to hear live what's going
9 on and eliminate this reporting out requirement, which has
10 potential for confusion anyway. So it seems like a better
11 result.

12 There will be responsibility for designating who among
13 them will be the individual. Those conversations would be
14 treated as AEO under the protective order. And we've also
15 agreed to provide them any correspondence between us and the
16 OIC staff with respect to drafts or e-mails that relate to
17 these discussions.

18 Does that seem satisfactory --

19 MR. MITCHELL: Contemporaneously.

20 MR. MILO: Pardon me?

21 MR. MITCHELL: Contemporaneously.

22 MR. MILO: So with that, maybe we could go run
23 through some of the dates right now. I apologize. The
24 document, I guess, is still in print. Maybe we could leave
25 it to others.

1 Do you have other comments? Anybody really?

2 MR. COOPERSMITH: Do you want to address the
3 housekeeping of the immediate stay for the --

4 MR. MILO: Let's do that at the end.

5 We could go through the dates, Rob? You've got on the
6 screen, if that's all right.

7 MR. MITCHELL: Sure. As we had previously
8 suggested, and intervenors as well, January 8th as the
9 deadline for filing any amendments to the Form A with the
10 Commissioner. January 30th becomes the deadline for
11 previously identified testifying experts, who represent the
12 OIC staff, to submit supplemental reports addressing the
13 effect of changes, if any, in the Form A. The intervenors
14 will receive those reports contemporaneously, but treat them
15 as AEO until redacted versions are available.

16 We've committed to completing the redaction process
17 within one week and within four days after the producing
18 reports. The OIC staff is also going to turn over to the
19 intervenors and to Premera the documents relied upon by the
20 consultants in preparing their supplemental reports. The
21 same kind of obligations attend Premera on February 6 when it
22 produces its supplemental reports, if any. It will produce
23 all of the documents relied upon within four days, redacted
24 version within a week.

25 We have then another week before the intervenors are

1 obliged to produce reports by previously identified
2 testifying experts on the changes in the Form A. They're
3 going to turn over their documents within four days as well.
4 The 13th is also the last day on which the intervenors can
5 submit document requests if they choose to do so since
6 document requests will be limited to the changes, if any, in
7 the Form A.

8 February 17th is the deadline for disclosure of new
9 fact witnesses by the intervenors. The OIC staff and Premera
10 both declined to identify any new fact witnesses, and it's
11 clear that the fact witnesses identified by the intervenors
12 may not be representatives of Premera or the OIC staff or
13 their consultants.

14 On February 23rd we have a deadline for completing all
15 discovery, including depositions of experts. Those
16 depositions would be limit to the supplemental reports and
17 the -- and, therefore, subject matter will be limited to
18 changes, if any, in the Form A.

19 March 3rd parties submit prefiled direct testimony.

20 March 18th parties submit prefiled responsive
21 testimony.

22 A hearing from March 29th to April 9th. Those dates
23 were chosen specifically with Judge Finkle's unavailability
24 after the 9th in mind.

25 April 19th is the deadline for posthearing

1 submissions.

2 June 7th the proposed new decision deadline, which is
3 60 days after April 9th, or as close thereto as we could
4 come.

5 COMMISSIONER KREIDLER: Okay.

6 MS. SUREAU: So you have contemplated 11 days for
7 the hearing? Am I counting right?

8 MR. MILO: You're presuming a lot there. Did we
9 count?

10 MR. HAMJE: I think we're dealing with 10 days so
11 far.

12 MS. McCULLOUGH: 10 days.

13 MR. SCHOENGARTH: 12 days if you include the
14 weekend.

15 MS. SUREAU: That's right. You count the 29th,
16 so it is 12 days.

17 MR. MILO: We tried to replicate what we thought
18 would work.

19 MS. SUREAU: When we did the initial schedule, I
20 remember we had 15 days if we counted the weekends. And I
21 just am surprised that you're --

22 MR. MILO: Minus Martin Luther King Day.

23 MR. HAMJE: During the prehearing conference we
24 were not counting them that way. We only did, like -- we had
25 nine days? That's what we were assuming because of the

1 holiday.

2 (Interruption by court reporter to
3 stop overlapping conversation.)
4

5 MS. SUREAU: We had the room booked for the holiday
6 as well as the weekends, and that was our safeguard, that if
7 we needed the time, we could have it.

8 MS. HAMBURGER: Can I suggest if we -- 'cause he's
9 not -- well, I don't know. Is Judge Finkle available on the
10 10th and 11th?

11 MR. MILO: I wouldn't assume that because I assume
12 he's using the spring holiday with the kids or something. I
13 suppose we could try to start a day earlier. I don't know
14 what that takes us to.

15 COMMISSIONER KREIDLER: I don't know. What -- I
16 think what we've got here right now is a document that I can
17 say that I agree to. But we need to check the dates, need to
18 check with Judge Finkle, but -- and I don't expect anything's
19 going to change from what he have right now in essence. I
20 don't know. It's availability of the location, confirming
21 that and being able to nail that down, Judge Finkle; those
22 are the things we don't know at this point. They're somewhat
23 intangibles at this point.

24 And so what I would suggest is that, if we have an
25 agreement now, and we're going to have a chance to review

1 this tomorrow, then I would issue an order tomorrow. Okay?

2 MR. COOPERSMITH: Thank you, Commissioner. May I
3 just add one?

4 MR. MILO: Before you do that, just a related
5 issue. Assuming the schedule worked for Judge Finkle and
6 these dates work, can I just ask Carol again: Are you
7 concerned that this is still too short a hearing time still?

8 MS. SUREAU: I am concerned about the shortness of
9 the hearing, especially what I heard from Christine about the
10 prehearing conference. It seems like there's a lot of work
11 to get done in a relatively short amount of time.

12 MS. BEUSCH: That would seem to be some concern for
13 the parties now that we're talking about 9 business days, and
14 now this is 10 business days. But I kind of left that
15 hearing on Monday thinking, "Well, if this got moved, we
16 might like to make sure there's even some more flexibility or
17 room now."

18 MR. HAMJE: May I make a suggestion or just a
19 thought or an insight? It's possible that as a result of the
20 discussions, sharing of information, that there might be some
21 ability to -- instead of spending as much time as we're
22 contemplating right now, having to go through issue by issue
23 in the hearing, that we might be able to summarize and
24 compact things, consolidate evidence, subject to the
25 Commissioner's approval. And that might mean that 10 days

1 might very well work in that situation.

2 MS. HAMBURGER: Along those same lines, can I
3 suggest that perhaps we -- we could always revisit this
4 halfway through, you know, in late February and see if
5 there's any --

6 MR. MILO: Actually, Ele, we don't agree to that.
7 The stipulation to move is based upon having some clear
8 understanding at the front end.

9 Carol, don't you have 12 days if you count the weekend?

10 MS. SUREAU: I agree. I was -- I wasn't -- yes,
11 you're correct.

12 MR. MILO: If you count weekends, which is what was
13 happening before --

14 MS. SUREAU: I had thought in the initial schedule,
15 in the schedule that we're in now, that we had 15 days.

16 MS. BEUSCH: There are two potential weekends.

17 MS. SUREAU: The weekends and Martin Luther King's
18 birthday holiday.

19 MS. BEUSCH: Not that anyone wanted to work the
20 holiday.

21 MR. MILO: So that seems like 12 full days if you
22 work the weekend. This was a tough -- a tough haul to get
23 here. So I would support going forward with this, subject to
24 the judge's availability, obviously.

25 There is -- I suppose maybe we could talk a little bit

1 about process. You, Commissioner, would want to check with
2 Judge Finkle, and then, I guess, if he's okay with it, then
3 we would enter a stipulation down at superior court.

4 And, Rob, I don't know if you had a chance to share that
5 with the Commissioner's counsel.

6 MR. MITCHELL: Indeed, I did. And I happened to
7 pull it up here on the computer, and I'm revising it as we
8 speak. And I propose to leave with Ms. Beusch a diskette
9 with both documents on it for her perusal and hopefully to
10 ease the load tomorrow.

11 MS. BEUSCH: Okay.

12 COMMISSIONER KREIDLER: Good. Well, I don't have a
13 good enough feel, to be honest with you, for the length of
14 time of -- I mean, I wish I -- I don't think any of us do at
15 this point, but -- and clearly it would be with the idea
16 that, if there was some major surprise, like anything else
17 that comes along, that we may have to go back.

18 But again, it would be a process of wanting to make sure
19 everybody participated in the discussion. And I think there
20 would be -- nobody wants to see a hearing jammed. It's not
21 in anybody's best interests. Therefore, if something
22 happened -- I'm wanting to go with it at this point knowing
23 what I know of having 12 days' potential here. And if
24 there's a surprise, like anything else, I have a feeling
25 we'll get together and talk.

1 MR. MILO: I'm comfortable with that from our --
2 Premera side.

3 COMMISSIONER KREIDLER: Okay. Oh, you have another
4 matter?

5 MS. HAMBURGER: Yes.

6 MR. COOPERSMITH: Commissioner, on behalf of the
7 intervenors, we did want to commend you first for your
8 thorough commitment to the public process and to exhibiting
9 leadership as a commissioner to get the parties to come and
10 produce an agreement on revising the case schedule. And we
11 do concur with Mr. Milo that OIC staff, Premera, and the
12 intervenors have, I think, worked very productively over this
13 past time during the recess to come up with a schedule that's
14 mutually acceptable.

15 But we did want to state for the record a disclaimer
16 here, which is that, while the intervenors do accept these
17 new dates, we do reserve the right to appeal the issue about
18 whether these contemplated changes, whatever changes come
19 forward on the Form A, might constitute a new Form A process.
20 And there is wording that Premera has drafted describing its
21 January 8th action that the intervenors do not share.

22 We, of course, recognize that you'll be filing this
23 document as an order, and that we respect. We just wanted to
24 make sure that our rights were preserved for a possible
25 challenge. Again, we don't know what those changes are going

1 to be so --

2 COMMISSIONER KREIDLER: So I understand, a
3 challenge to say that a new Form A would have -- if there was
4 enough change made, that it wouldn't -- it went beyond the
5 boundaries of the original Form A, and therefore it would
6 have to be a new Form A?

7 MR. COOPERSMITH: That is correct. We don't -- we
8 think that this is a very acceptable alternative.

9 COMMISSIONER KREIDLER: Sure.

10 MR. COOPERSMITH: And we do appreciate the
11 opportunity that you provided to try to come up with a
12 resolution while all the parties were present. All we're
13 trying to do is just reserve our clients' rights since we
14 don't know what is going to happen.

15 But our expectation is that, if you issue this order,
16 that we will comply with these deadlines and proceed with the
17 review of the Form A.

18 COMMISSIONER KREIDLER: Well, I think it's fair to
19 say, you know, there's always room for the potential of
20 seeing a situation where it got to that point. If,
21 hypothetically, all of a sudden it was that, hypothetically,
22 that WellPoint showed up and said, "We want -- this isn't --
23 this isn't a conversion. This is a -- it is a conversion,
24 but it's a conversion sale, like we've seen in some other
25 states," clearly, that would -- if there was something that

1 reached that magnitude -- I mean, I think it's fair to say
2 that nobody's rights would be prevented from being able to
3 appeal, essentially, to say that it had gone beyond a
4 threshold. I certainly don't anticipate that. I don't think
5 any of the parties do. But if something came up, clearly,
6 you'd still have the right to make that appeal.

7 MR. COOPERSMITH: With that understanding, we just
8 wanted to let you know that, other than that characterization
9 of the January 8th action, the intervenors accept what has
10 been submitted to you.

11 MS. McCULLOUGH: And there's one additional thing,
12 Commissioner Kreidler. On the Alaska intervenors' behalf, I
13 just want to say that nothing in what we just agreed to,
14 particularly in terms of the language, should be construed to
15 prevent the Alaska report or the Alaska consultants from
16 testifying if you should rule that way on our pending motion.

17 COMMISSIONER KREIDLER: With the change of dates?
18 Clearly not. It wouldn't interfere.

19 MS. HAMBURGER: Commissioner, also, I have one more
20 housekeeping matter.

21 Premera asked for a stay of the deadlines under the
22 13th order. And one of -- one question that's come up is
23 our expert Aaron Katz was deposed on December 5th, but his
24 deposition was not completed. It's now been rescheduled for
25 Friday. We believe that it's a waste of time and resources

1 to continue to depose him now on the original Form A when
2 he's going to review a new Form A and opine about it again
3 and be available for deposition later. So we'd ask if that
4 deposition can also be stayed.

5 MR. MILO: Rob --

6 MR. MITCHELL: Let me speak to that, if I might.
7 Commissioner Kreidler, Mr. Katz was initially identified to
8 us by Mr. Spoonmore, who said that he would be available on
9 two days. The first was, I think, November 26th, and the
10 second was December 5th. We noted him to for the first
11 date and sent out notice of deposition.

12 We were then informed that he was not available on that
13 date and would be made available only on the 5th of December,
14 which was the last date set for depositions.

15 So we began Mr. Katz's deposition on the 5th. He was
16 represented at the deposition by Mr. Calia from
17 San Francisco, who did not -- had not participated in any of
18 the depositions prior to that point, interposed a great
19 number of objections to the questions that were being asked
20 of the witness because of asserted work-product claims and
21 attorney-client-privilege claims, which Judge Finkle had
22 ruled out of order for all the other witnesses.

23 So the deposition was delayed while the parties went to
24 Judge Finkle to get some clarity on those issues. It was not
25 possible to finish Mr. Katz's deposition on the 5th. We were

1 prepared to continue on the 6th, but we were told that his
2 next available time would be the 12th. So he's currently
3 scheduled to have his deposition concluded on Friday of this
4 week.

5 The difficulty with putting off his deposition at this
6 point is that under the terms of the order that we just
7 agreed to, any deposition that is conducted with respect to
8 any expert after this point is going to be limited to what
9 they have to say about the changes in the Form A. Mr. Katz
10 had a great deal to say about the original Form A. We
11 haven't finished asking him questions about that. We have to
12 be able to finish that line of questioning now because we
13 will not be able to do it in the future.

14 MR. MILO: If I could supplement, Amy, can I finish
15 this? Robert and I are going to address this together. I
16 apologize.

17 All of the other depositions have been completed. And
18 this was held over of the witness's convenience, and,
19 actually, the scheduled date was at the witness's
20 convenience, too on the last day. It is not necessarily the
21 outcome that Premera files a new Form A. We may be going to
22 hearing on the old Form A. We should be able to finish the
23 deposition of this witness who testified on what he saw to
24 date, and complete that process.

25 MS. HAMBURGER: And I just want to say we would --

1 if there are changes in the Form A, we're happy to make
2 Mr. Katz available at this later time so he can be deposed on
3 both the original Form A and this Form A at one time so he
4 doesn't have to come back a third time. We'd be willing to
5 grant that. Or if there isn't any changes to the Form A and
6 you need to depose him later based on what we know rather
7 than depositing him on a moving target --

8 MR. MILO: If I may, the deposition was interrupted
9 by a week hiatus. The individual taking the deposition had
10 the flow of the whole deposition interrupted because of this
11 one week after -- to reconvene a deposition on the current
12 materials a month later seems inappropriate.

13 The other thing we could do is defer this to Judge
14 Finkle who has been disposing of these kind of motions
15 throughout.

16 COMMISSIONER KREIDLER: That's where they typically
17 would go. I would suggest -- I would be a lot more
18 comfortable if you would work it through Judge Finkle.

19 MR. MITCHELL: Thank you.

20 MS. HAMBURGER: Thank you, Commissioner.

21 COMMISSIONER KREIDLER: No further business to come
22 before us I will adjourn the meeting at 7:00 p.m.

23 (Proceedings concluded at 7:00 p.m.)
24
25

C E R T I F I C A T E

I, SUE E. GARCIA, a duly authorized Court Reporter and
Notary Public in and for the State of Washington, residing at
Tacoma, do hereby certify:

That the foregoing proceedings were taken before me on
the 10th of December, 2003, and thereafter transcribed by me by
means of computer-aided transcription, that the transcript is a
full, true, and complete transcript of said proceedings;

That I am not a relative, employee, attorney, or
counsel of any party to this action or relative or employee of
any such attorney or counsel, and I am not financially
interested in the said action or the outcome thereof;

IN WITNESS HEREOF, I have hereunto set my hand and
affixed my official seal this December 14, 2003.

SUE E. GARCIA, CCR, RPR
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